

## ZONING AND ADMINISTRATIVE HEARINGS

**PROGRAM:**

Zoning and Administrative Hearings

**PROGRAM ELEMENT:**
**PROGRAM MISSION:**

To provide a fair, impartial, and objective hearing process for land use and other administrative matters that protects the due process rights of the participants as well as the public interest; to provide comprehensive, unbiased analyses and recommendations for the County Council on all issues involved in zoning cases; to maintain orderly and current case records; to adhere to procedural and legal requirements including time constraints; and to respond in an accurate, timely, and courteous manner to inquiries from the public and government officials

**COMMUNITY OUTCOMES SUPPORTED:**

- Enhance County Council decisionmaking on land use matters
- Ensure that the public interest is protected
- Provide open, accessible, responsive government
- Increase public confidence in government processes and services

**PROGRAM MEASURES**

	FY03 ACTUAL	FY04 ACTUAL	FY05 ACTUAL	FY06 ESTIMATE <sup>1</sup>	FY07 CE REC
<b>Outcomes/Results:</b>					
Percentage of zoning recommendations accepted by the County Council	100	91	100	100	100
Percentage of special exception recommendations accepted by the Board of Appeals	98	100	94	95	95
Percentage of recommendations accepted by the Commission on Human Rights	75	100	NA	NA	100
<b>Service Quality:</b>					
Average time from the filing of a case until a hearing is held (months) <sup>a</sup>	3.4	5.5	4.4	4.3	4.5
Average time from the close of record until a decision or recommendation is issued (days) <sup>b</sup>	24	36	42	25	25
Percentage of cases in which all legal deadlines and other requirements for providing hearing notice are met	100	100	100	99	100
Percentage of cases in which the deadline for the hearing examiner report is met without an extension	95	91	89	80	90
Number of hearing examiner decisions or recommendations appealed	1	2	2	0	0
Percentage of hearing examiner decisions overturned on appeal <sup>c</sup>	0	0	0	0	0
Number of cases pending at the end of the fiscal year	30	57	63	61	60
<b>Efficiency:</b>					
Average cost per case (\$)	3,779	4,666	6,647	8,551	8,016
Percentage of Office of Zoning and Administrative Hearings expenditures covered by fees	33	31	29	20	19
<b>Workload/Outputs:</b>					
County Council cases completed	14	12	15	13	12
Board of Appeals cases completed	69	38	38	38	40
Decisions issued by the hearing examiner on special exception cases	24	34	12	2	5
Other referred cases completed	5	6	0	2	3
TOTAL cases completed	112	90	65	55	60
Filing fees collected (\$) <sup>d</sup>	138,700	131,550	127,445	93,750	93,750
<b>Inputs:</b>					
Expenditures	423,192	419,972	432,032	470,300	480,960
Workyears	2.3	3.8	3.8	3.8	3.8
Number of hearing examiners <sup>e</sup>	0.8	1.8	1.8	1.8	1.8

**Notes:**

<sup>a</sup> For cases referred from the Human Rights Commission, the average time is computed from when the referral is received by the Office of Zoning and Administrative Hearings (OZAH), not from when a complaint is filed with the Commission.

<sup>b</sup> The record is closed when all of the evidence has been submitted. Typically, the record closes within one week after the final hearing date. In some cases, however, the record is held open for weeks or months to allow the applicant to submit new evidence and to allow review of that evidence by technical staff at the Maryland-National Capital Park and Planning Commission. The sum of the average time from filing until the hearing plus the average time from the close of record until a decision or recommendation is issued provides a good indicator of the average time required by OZAH from the filing of the complaint until a decision or recommendation is made.

<sup>c</sup> One decision based on Hearing Examiner recommendation was appealed and upheld in FY03. Two decisions were appealed in FY04: one was upheld in lower court with further appeal pending, and the other was upheld with no further appeal possible. Two decisions were appealed in FY05: one was settled, and one is pending.

<sup>d</sup> OZAH's filing fees were increased on July 1, 2003 in an effort to increase the percentage of operating costs covered by revenues. On September 14, 2004, the fees were increased again (this time by 25%) in connection with a County Council resolution requiring OZAH to send 25 percent of its revenue to the Park and Planning Department to provide cost-recovery for their staff's work on County Council and Board of Appeals cases.

<sup>e</sup> In addition to the hearing examiners on staff, OZAH contracts with two outside attorneys who serve as hearing examiners on a case-by-case basis. The contract attorneys each generally hear two to three cases per year.

<sup>1</sup> Except for the expenditures, workyears, and filing fees collected (all of which are based on budgeted levels), the FY06 figures are estimated based on the actual results through December 31, 2005 extrapolated for the full year.

**EXPLANATION:**

The Office of Zoning and Administrative Hearings (OZAH) performs a quasi-judicial function that involves processing applications for individual zoning and special exception requests, and conducting administrative hearings for Executive and Legislative Branch agencies. OZAH is responsible for ensuring that applications contain pertinent information, that proper notice is given to all interested parties, that adequate pre-hearing disclosure is made, that parties are accorded an opportunity to testify and cross-examine witnesses, and that the record includes all pertinent materials. The hearing examiner (referred to as an administrative law judge in some jurisdictions) must prepare and issue a report containing findings of fact and conclusions of law based on the evidence of record, which is then referred to the ultimate decision maker (i.e. the County Council, the Board of Appeals, or other agencies using the hearing examiner's services). OZAH conducts hearings in all cases requesting Council action on a zoning matter and, since July 1, 2003, all special exceptions filed with the Board of Appeals, as well as a small number of cases that are filed directly with OZAH and a small number of referrals from other County agencies. The Office is also responsible for collecting filing fees, maintaining a current hearing docket, preparing advertising and other forms of notice, and providing court reporter services.

**PROGRAM PARTNERS IN SUPPORT OF OUTCOMES:** County Council and staff, Board of Appeals and staff, Human Rights Commission and staff, other County departments, Maryland-National Capital Park and Planning Commission and its technical staff.

**MAJOR RELATED PLANS AND GUIDELINES:** Section 512 of the Montgomery County Charter; Chapter 59 and Sections 2-139 and 2-140 of the Montgomery County Code; Regional District Act (Article 28 of the Annotated Code of Maryland); Administrative Procedures Act (chapter 2A of the Montgomery County Code); land use regulations; master and sector plans; legal and procedural requirements concerning local map amendments and development plan amendments; rules and procedures issued by the Board of Appeals, Office of Human Rights, and other referring agencies.